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5 UNITED STATES BANKRUPTCY COURT  
6 EASTERN DISTRICT OF CALIFORNIA  
7 SACRAMENTO DIVISION  
8

9 In re ) Case No. 11-20672-E-13  
10 TRE HOLDINGS, LLC, )  
11 Debtor(s). )  
12 \_\_\_\_\_ )

13 **This memorandum decision is not approved for publication and may**  
14 **not be cited except when relevant under the doctrine of law of the**  
15 **case or the rules of claim preclusion or issue preclusion.**

16 MEMORANDUM OPINION AND DECISION  
17 Order to Show Cause - Craig Cawlfild, Dkt. #50

18 The hearing on the Order to Show Cause issued by the court on  
19 April 29, 2011 (the hearing having been continued at the request of  
20 the parties in interest), concerning the conduct of Craig Cawlfild  
21 in the commencement of this Chapter 13 case and repeated false  
22 representations to this court that he was admitted to appear in the  
23 Eastern District of California. Mr. Cawlfild appeared at the  
24 hearing. In addition, Mr. Tremaine Fowlkes appeared at the  
25 hearing, in response to an order to show cause concerning his  
26 conduct, and Walter J. Sawicki, the attorney of record for the  
27 Debtor for the appeal pending before the District Court and the  
28 order to show cause filed against Tremaine Fowlkes, has filed  
29 notices with this court that he has withdrawn for such

1 representation.

2 The Order to Show Cause, Dckt. 50, addressed the conduct of  
3 Craig Cawlfild, as counsel of record for the Debtor in this case,

4 1. Commencing a Chapter 13 bankruptcy case for a limited  
5 liability company (a fictitious person) in violation of 11 U.S.C.  
6 § 109(e);

7 2. Failure to include City National Bank and Reliance on the  
8 Verification of Master Mailing List filed in this case;

9 3. Stating under penalty of perjury in two declarations in  
10 this case that counsel was licensed to practice in all federal  
11 districts in California, when he is not admitted to practice in the  
12 Eastern District of California (where he was commencing the Chapter  
13 13 bankruptcy case).

14 **Commencement of Chapter 13 Case**

15 On January 10, 2011, TRE Holdings, LLC commenced a Chapter 13  
16 case by filing a voluntary petition in bankruptcy. Dckt. 1.  
17 Tremaine Fowlkes signed the petition on January 4, 2011, stating  
18 that he was a Member of TRE Holdings, LLC. Craig Cawlfild also  
19 signed the petition as the attorney for TRE Holdings, LLC. In  
20 signing the petition, Mr. Cawlfild certified that to the best of  
21 Mr. Cawlfild's knowledge, information, and belief, formed after an  
22 inquiry reasonably under the circumstances the pleading filed:

23 a. Is not being presented for any improper purpose.

24 b. The legal contentions therein are warranted by  
25 existing law or by a nonfrivolous argument for the extension,  
26 modification, or reversal of existing law or the establishment  
27 of new law.

28 Fed. R. Bankr. P. 9011(b)(1) and (2). If, after notice and

1 opportunity to respond, the court determines that the  
2 certifications have been violated, the court may impose an  
3 appropriate sanction on the attorney. The sanction imposed by the  
4 court shall be such to deter repetition of such conduct or  
5 comparable conduct by others similarly situated, which may include  
6 an order to pay a penalty into court. *Id.*, 9011 (c).

7 Mr. Cawlfild filed on January 10, 2011, a Verification of  
8 Master Address List for the Debtor, which was signed by Mr.  
9 Fowlkes. Dckt. 4. For this Chapter 13 bankruptcy case filed by  
10 this limited liability company, the only addresses listed were for  
11 TRE Holdings, LLC (the Debtor) and the United States Trustee. Mr.  
12 Fowlkes states under penalty of perjury that the information is  
13 accurate. No Schedules or Statement of Financial Affairs was filed  
14 in the bankruptcy case.

### 15 **Chapter 13 Bankruptcy Case**

16 Congress limited the persons who can qualify as a Chapter 13  
17 debtor. Only an "individual with regular income" may be a debtor  
18 in a Chapter 13 case. 11 U.S.C. § 109(e). Though fictitious  
19 entities such as corporations, partnerships, and limited liability  
20 companies fall within the broad definition of "person" as set forth  
21 by Congress in 11 U.S.C. § 101(41), they are not an individual as  
22 used in that definition. A limited liability company, a separate  
23 fictitious entity from any individual, does not meet the statutory  
24 requirement that only an individual is legally able to commence a  
25 Chapter 13 case.<sup>1</sup>

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27 <sup>1</sup> A limited liability company is an entity created under  
28 California Corporations Code §§17000 et. seq. which has one or  
more members, for which no member has personal liability for the  
debts, liabilities, or obligations of the limited liability

1           When the improper filing of this Chapter 13 case by a limited  
2 liability company was brought to the court's attention, as Order to  
3 Show Cause was issued on February 1, 2011, directing Craig  
4 Cawlfild to address his conduct in the improper filing. Dckt. 17.  
5 Mr. Cawlfild responded timely, filing his declaration on February  
6 16, 2011. "First Cawlfild Declaration," Dckt. 19.

7           The First Cawlfild declaration testifies under penalty of  
8 perjury that Mr. Cawlfild is an attorney licensed to practice law  
9 in California and "**in all Federal courts located in California.**"  
10 Emphasis added. Mr. Cawlfild testifies that he is informed and  
11 believes that TRE Holdings, LLC is a closely held limited liability  
12 corporation with all or a majority of its shares owned by Tremaine  
13 Fowlkes. With respect to the bankruptcy filing, Mr. Cawlfild  
14 states that he was contacted by Ron Hacker, whom is identified in  
15 the declaration as acting as a business and real estate manager for  
16 TRE Holdings, LLC. Mr. Cawlfild testifies that he had previously  
17 represented TRE Holdings, LLC in state court litigation.

18           Mr. Cawlfild further testifies that the bankruptcy petition  
19 was prepared by a paralegal in his office and forwarded to  
20 Mr. Cawlfild for review. Mr. Cawlfild (who states that he has  
21 minimal bankruptcy experience) had some remembrance that a Chapter  
22 13 case was limited to an individual. Notwithstanding his concern,  
23 and without conducting any legal research, Mr. Cawlfild chose to

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25 company based solely on being a member. A limited liability  
26 company is an entity which allows its members to have the  
27 liability protection afforded to shareholders of a corporation  
28 and receive the pass-through tax advantage of a partnership  
corporations. BALLANTINE AND STERLING CALIFORNIA CORPORATION LAWS, 4TH  
EDITION, § 901.01 -.02

1 rely on representations made by his client that the bankruptcy  
2 needed to be immediately filed as a Chapter 13 case and that the  
3 client would provide him with the legal authority supporting the  
4 filing at a later date. In addition, Mr. Cawlfieid directs the  
5 court to an email stated to be from his paralegal which discusses  
6 an LLC filing a Chapter 13 bankruptcy case. No citations, legal  
7 authority, or source of the text in the email from the paralegal is  
8 provided.

9 It was only after acceding to the demands of his client, and  
10 relying on the legal opinion of his client and unattributed email,  
11 did Mr. Cawlfieid conduct any research and conclude that the filing  
12 of a Chapter 13 case was improper. Mr. Cawlfieid further testifies  
13 that after he discovered that the filing of the Chapter 13 case was  
14 improper, he discussed with his client converting the case to one  
15 under Chapter 11. However, due to "unfamiliarity with the local  
16 procedures of the Eastern District of California," he incorrectly  
17 thought that the case would not be dismissed until after  
18 February 22, 2011, notwithstanding TRE Holdings, LLC's failure to  
19 file any schedules or statement of financial affairs. He based  
20 this mis-belief based on his experience of cases being dismissed in  
21 the United States Bankruptcy Court for the Central District of  
22 California.

23 Craig Cawlfieid appeared at the hearing on the Order to Show  
24 Cause and explained his "error" and steps taken to correct the  
25 misunderstanding of the law in his office. Based upon the  
26 explanation at the hearing and Mr. Cawlfieid's testimony under  
27 penalty of perjury, the court discharged the Order to Show Case.  
28 Dckts. 22 and 23.

1           Shortly after discharging the Order to Show Cause, the court  
2 was presented with a motion to annul the automatic stay filed by  
3 Pro Value Properties, Inc., the holder of a deed of trust against  
4 real property owned by an entity known as BAG Fund, Inc. The  
5 court's detailed findings of fact and conclusions of law are stated  
6 in the Civil Minutes, Dckt. 48. Craig Cawlfieid, as the attorney  
7 for TRE Holdings, LLC in this bankruptcy case filed his declaration  
8 in opposition to the motion. Mr. Cawlfieid chose to provide his  
9 personal testimony in opposition to motion to annul the stay.  
10 Second Cawlfieid Declaration, Dckt. 39. Mr. Cawlfieid again  
11 testified under penalty of perjury that he is licensed to practice  
12 **"in all Federal courts located in California."** Dckt. 39, emphasis  
13 added.

14           The court granted the motion and annulled the automatic stay.  
15 The evidenced showed that the bankruptcy case was filed by TRE  
16 Holdings, LLC to try and use the automatic stay in this case to  
17 block the foreclosure sale by Pro Value Properties, Inc. of the BAG  
18 Fund, Inc. property. BAG Fund, Inc. and TRE Holdings, LLC (which  
19 transferred the property to BAG Fund, Inc.) asserted that the  
20 automatic stay in the TRE Holdings, LLC bankruptcy case protected  
21 an unrecorded junior deed of trust and rendered any foreclosure by  
22 Pro Value Properties, Inc. in valid.

23           In granting the motion and annulling the automatic stay the  
24 court made several critical findings as to the opposition presented  
25 and evidence submitted. First, the deed to BAG Fund, Inc. clearly  
26 stated that the value of the property was less than the liens  
27 against the property. Second, TRE Holdings, LLC did not record the  
28 purported deed of trust until January 26, 2011. Third, TRE

1 Holdings, LLC never provided any evidence of a promissory note  
2 secured by the alleged deed of trust. Fourth, The foreclosure sale  
3 occurred on January 25, 2011, one day before the recording of the  
4 alleged deed of trust. Fifth, Mr. Cawlfieid's declaration  
5 conspicuously omits any reference to the alleged unrecorded deed of  
6 trust or the existence of any promissory note. Further,  
7 Mr. Cawlfieid does not testify what he did, as the bankruptcy  
8 attorney for TRE Holdings, LLC, to notify the foreclosure company  
9 of the bankruptcy filing and creation of the automatic stay.<sup>2</sup>  
10 Mr. Cawlfieid does testify that now that the foreclosure sale has  
11 occurred concerning the unrecorded deed of trust, he and the Debtor  
12 were willing to pursue settlement negotiations over the alleged  
13 violation of the automatic stay.

14 The court ultimately concluded that the bankruptcy filing by  
15 TRE Holdings, LLC was part of an improper scheme to delay or hinder  
16 the foreclosure sale. The court concluded that the evidence  
17 submitted by TRE Holdings, LLC was not credible evidence of the  
18 alleged obligation, validity of the deed of trust, or good faith in  
19 commencing the Chapter 13 case for TRE Holdings, LLC. It was in  
20 connection with the hearing that counsel for Pro Value Properties,  
21 Inc. brought to the court's attention that Craig Cawlfieid was not  
22 admitted to practice before the Eastern District of California,  
23 which the court confirmed with the Clerk of the United States  
24 Bankruptcy Court for the Eastern District of California.

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27 <sup>2</sup> The court takes judicial notice of the fact that  
28 attorneys representing debtors filing bankruptcy to stay a  
foreclosure sale immediately notice the foreclosure company of  
the case and automatic stay.

1 **Counsel's Misrepresentations to this Court**

2 If at the time of the first Order to Show Cause for the  
3 improper filing of the Chapter 13 case by a limited liability  
4 company the court had been aware of the facts which came to light  
5 in the motion to annul, the outcome of that proceeding may well  
6 have been different. The court, in ruling on the motion to annul,  
7 determined that Mr. Cawlfieid was directly involved in the scheme  
8 which led to the annulment of the stay. However, the ruling on the  
9 First Order to Show Cause having been issued, the court does not  
10 re-litigate the conduct of improperly filing the Chapter 13 case,  
11 though that conduct is relevant in considering the testimony now  
12 before the court in considering Mr. Cawlfieid's testimony. The  
13 court discharges that portion of the Order to Show Cause which  
14 relates to the improper commencing of the Chapter 13 case for a  
15 limited liability company. The court also discharges that portion  
16 of the Order to Show Cause relating to the failure to include City  
17 National Bank and Reliance on the Verification of the Master  
18 Mailing list filed in this case.

19 The court now considers Mr. Cawlfieid appearing before the  
20 courts of the Eastern District of California, signing pleadings  
21 and commencing a bankruptcy case for a client for which an attorney  
22 must be admitted to practice before the Eastern District of  
23 California, and testifying on two occasions under penalty of  
24 perjury that he was admitted to practice before the Eastern  
25 District of California. During all periods relevant to this Order  
26 to Show Cause Mr. Cawlfieid was not admitted to appear before the  
27 United States District Court and United States Bankruptcy Court for  
28 the Eastern District of California.

1 Craig Cawlfieid filed a declaration in response to the instant  
2 Order to Show Cause on July 12, 2011. Dckt. 78, "Third Cawlfieid  
3 Declaration." In this third declaration Mr. Cawlfieid now  
4 testifies that he was admitted to practice in the Eastern District  
5 of California on May 23, 2011. Exhibit 1 to the Third Cawlfieid  
6 Declaration is identified as an email from the District court  
7 confirming that Mr. Cawlfieid was "now admitted to practice" in the  
8 Eastern District of California. This email, identified as from  
9 Victoria Minor and Kimberly Zignago, is dated May 26, 2011.

10 In the Third Cawlfieid Declaration, Mr. Cawlfieid testifies  
11 under penalty of perjury that in 2000 he applied and was admitted  
12 to practice in the Central District of California. He states that  
13 he "mistakenly assumed" that the paperwork he completed for the  
14 Central District of California was effective for all districts in  
15 California. Mr. Cawlfieid testifies that while he did not make the  
16 prior statements under penalty of perjury with an intent to mislead  
17 the court or abuse the bankruptcy system, there were merely  
18 "boilerplate statements which I carelessly inserted without  
19 verifying the fact that my admission to federal practice was valid  
20 only in the Central District of California." Third Cawlfieid  
21 Declaration, pg. 2:22-25.

22 Though not filing a written response, Walter J. Sawicki  
23 appeared at the hearing telephonically to support Craig Cawlfieid  
24 in response to the Order to Show Cause. Mr. Sawicki had appeared  
25 as the attorney of record for the Debtor for the appeal of this  
26 court's order annulling the automatic stay and the orders to show  
27 cause. On July 10, 2011, Mr. Sawicki filed Verified Notices of  
28 Termination of Representation TRE Holdings, LLC for the appeal,

1 Craig Cawlfieid with respect to the Order to Show Cause, and  
2 Tremaine Fowlkes with respect to the order to show cause.  
3 Dckts. 70, 72, and 73. In the verified pleading Mr. Sawicki  
4 testifies under penalty of perjury that he was retained by Ron  
5 Hacker, who was the agent of TRE Holdings, LLC. Mr. Sawicki  
6 testifies in May of 2011, Mr. Hacker terminated the employment  
7 relationship by refusing to pay Mr. Sawicki his fees. No  
8 explanation is provided as to how Mr. Hacker, a third-party, could  
9 terminate the attorney-client relationship which was created  
10 between Mr. Sawicki and Mr. Cawlfieid, and Mr. Sawicki and  
11 Mr. Fowlkes.

12 In the Third Cawlfieid Declaration, Mr. Cawlfieid testifies  
13 under penalty of perjury that Ron Hacker is the owner of BAD Fund,  
14 the purchaser of the property from TRE Holdings, LLC<sup>3</sup>. In his  
15 first declaration, Mr. Cawlfieid testifies under penalty of perjury  
16 that it was actually Ron Hacker, acting as a business and real  
17 estate manager for TRE Holdings, LLC, who contacted him on  
18 January 6, 2011 for the emergency bankruptcy filing. Dckt. 19,  
19 pg. 2:7-9. Though the name did not appear to be significant at the  
20 time of the first declaration, it appears that Mr. Hacker was the  
21 acting as the principal for both BAG Fund, Inc. Though BAG Fund,  
22 Inc. was the owner of the real property which was the subject of  
23 the imminent foreclosure, Mr. Cawlfieid and Mr. Hacker worked

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25 <sup>3</sup> The declaration references the Debtor as TRE Holdings  
26 Capital rather than TRE Holdings, LLC. While it is clear to the  
27 court that Mr. Cawlfieid is making reference to the TRE Holdings,  
28 LLC, the Debtor, it raises the question as to how many different  
"TRE Holdings" entities that Mr. Cawlfieid, Mr. Fowlkes,  
Mr. Hacker, and others have been involved with concerning the  
obligation which was the subject of the motion to annul the stay.

1 together to file the Chapter 13 case for TRE Holdings, LLC and  
2 assert a trust deed and note (evidence which was never presented to  
3 the court) to assert a violation of the automatic stay and attempt  
4 to negotiate a settlement thereof.

5 **DECISION**

6 The court is presented with the difficult and unpleasant task  
7 of judging the conduct of an attorney who has testified under  
8 penalty of perjury. There is no dispute that Craig Cawlfieid was  
9 not admitted to practice in the Eastern District of California.  
10 There is no dispute that he affirmatively misrepresented under  
11 penalty of perjury that he was admitted to practice in the Eastern  
12 District of California. It is also clear that even after having it  
13 confirmed to him that he was not admitted to practice in the  
14 Eastern District of California, Pro Value Properties, Inc. Reply to  
15 Opposition to Motion to Annul filed on April 19, 2011, Dckt. 44,  
16 and this second Order to Show Cause issued by the court on  
17 April 29, 2011, Craig Cawlfieid did not become admitted to appear  
18 in the Eastern District of California until May 25, 2011, on the  
19 eve of the June 7, 2011 hearing on this second Order to Show Cause.

20 The court is asked to accept an explanation that an  
21 experienced attorney who has been appearing in federal court for  
22 ten (10) years made the mistaken assumption that admission before  
23 in the Central District of California was an automatic admission in  
24 all other districts in California. Further, the court would have  
25 to accept as an excuse for making such misstatements under penalty  
26 of perjury because there were merely "boilerplate statements which  
27 I carelessly inserted without verifying the fact that my admission  
28 to federal practice was valid only in the Central District of

1 California." Third Cawlfieid Declaration, pg. 2:22-25. There is  
2 no exception to committing perjury over a material  
3 misrepresentation because it was "boilerplate language" or the  
4 declarant chose not to take the time to verify the statements  
5 before making them under penalty of perjury.

6 The credibility of Mr. Cawlfieid is further undercut by his  
7 testimony and the arguments of Mr. Sawicki. The court accepts as  
8 truthful Mr. Sawicki's statements in his Verified Notices of  
9 Termination of Attorney Representation that it was Ron Hacker, the  
10 owner of BAG Fund, Inc. who was acting as the principal of TRE  
11 Holdings, LLC in this bankruptcy case in arranging for Mr. Sawicki  
12 to create attorney-client relationships with Craig Cawlfieid,  
13 Tremaine Fowlkes, and TRE Holdings, LLC. The court accepts as  
14 truthful Mr. Cawlfieid's testimony that it was Ron Hacker who  
15 communicated with him and arranged for Craig Cawlfieid to file the  
16 Chapter 13 case for TRE Holdings, Inc.

17 Craig Cawlfieid further testifies that he had an attorney-  
18 client relationship with TRE Holdings, LLC in state court  
19 proceedings. He testifies that he has personal knowledge that TRE  
20 Holdings, LLC is a party in several California Superior Court  
21 lawsuits, TRE Holdings, LLC has at least three appeals it has  
22 commenced from the state court actions, and that he has made  
23 appearances at status conferences for TRE Holdings, LLC. It was  
24 the knowledge he had of these facts and the litigation that Mr.  
25 Cawlfieid considered in commencing the bankruptcy case in which he  
26 provided the declarations.

27 The court does not find credible the contention that the  
28 affirmative misstatement of being admitted to appear in the Eastern

1 District of California were a mere oversight. The court also does  
2 not accept the "it was merely boilerplate" and "I didn't bother to  
3 conduct any investigation of the facts I was testifying under  
4 penalty of perjury" excuses. Counsel clearly knew he had to be  
5 admitted to practice in the federal district, having applied to the  
6 Central District of California ten years earlier. It is  
7 unreasonable to contend that an attorney with ten years of  
8 experience could believe in good faith that being admitted to  
9 appear in one federal district allowed the attorney to appear in  
10 all federal districts. If such was his belief, no explanation was  
11 provided as to why he carefully limited the statement in his  
12 declarations to merely state that he was admitted to appear in all  
13 federal court in California.

14 Mr. Cawlfeld's own testimony is that he has significantly  
15 more knowledge, experience, and involvement with TRE Holdings, LLC  
16 and Ron Hacker than merely getting an emergency call to file a  
17 bankruptcy. He also knew that Ron Hacker was the owner of BAG  
18 Fund, Inc., the entity which held title to the property that was  
19 the subject of the foreclosure, and that Mr. Hacker was acting as  
20 the principal of TRE Holdings, LLC instructing Mr. Cawlfeld to  
21 file the Chapter 13 bankruptcy case.

22 The court finds that Craig Cawlfeld intentionally, or with  
23 such reckless disregard of the facts as to be unreasonable,  
24 misrepresented under penalty of perjury in two declarations that he  
25 was admitted to appear in the Eastern District of California. The  
26 court does not know if this was done merely to try and obtain some  
27 short term business from Ron Hacker, if he has a greater interest  
28 in Mr. Hacker's investments, if he believed that creating a

1 violation of the automatic stay would inure to his economic  
2 benefit, or he just would state whatever was necessary to make the  
3 best testimony possible for his client to prevail in trying to  
4 preserve a violation of the automatic stay.

5       The court cannot condone this conduct or allow this counsel or  
6 other counsel to believe that attorneys or other witnesses may make  
7 boilerplate or other statements without any minimal investigation  
8 under penalty of perjury. The judicial process is built on  
9 witnesses testifying truthfully, and continuing to do so in the  
10 future.

11       The appropriate corrective sanction ordered in this case is a  
12 monetary payment by Craig Cawlfild of \$500.00 to the Clerk of the  
13 Bankruptcy Court. Such amount is below the dollar limit for  
14 sanctions which must be reported to the California State Bar and is  
15 not punitive, but should have the intended prospective effect of  
16 inducing this counsel and other witnesses to truthfully make  
17 statements in declarations.

18       The \$500.00 shall be paid on or before September 30, 2011.  
19 Failure to timely pay the sanction to the Clerk of the Bankruptcy  
20 Court shall result in the court certifying this matter to the  
21 United States District Court for consideration of punitive  
22 sanctions and notice to the Clerk of the United States District  
23 Court and Bankruptcy Court of the failure to pay this court ordered  
24 sanction.

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1 This Memorandum Opinion and Decision constitutes the court's  
2 findings of fact and conclusions of law. The court shall issue a  
3 separate order consistent with this ruling.

4 Dated: September 6, 2011

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6 /s/ Ronald H. Sargis  
RONALD H. SARGIS, Judge  
7 United States Bankruptcy Court  
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